

BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF ARKANSAS

IN THE MATTER OF:

AID ORDER NO. 2018- 55

JAMES ROBERT PHILLIPS  
PETITIONER

---

ORDER

---

On this day, the matter of the resident producer license application of James Robert Phillips ("Petitioner") came before Allen Kerr, Arkansas Insurance Commissioner ("Commissioner"). A hearing was held on March 15, 2018, in the First Floor Hearing Room of the Arkansas Insurance Department ("Department") pursuant to a Notice of Hearing dated February 23, 2018. The hearing was held before Chief Deputy Commissioner Russ Galbraith ("Hearing Officer") pursuant to his appointment by the Commissioner in accordance with Ark. Code Ann. § 23-61-103(e)(1). The Department was represented by Gray Allen Turner, Associate Counsel.

FINDINGS OF FACT

1. The Commissioner of Insurance has jurisdiction pursuant to the Arkansas Insurance Code, specifically Ark. Code Ann. §§ 23-60-101, *et seq.*
2. Petitioner resides in Faulkner County, Arkansas.
3. Petitioner submitted an Uniform Individual Application for License Registration for an Arkansas resident insurance producer license on January 22, 2018. (Exhibit 4)
4. The Department denied Petitioner's producer application on February 2, 2018. (Exhibit 5)
5. Petitioner filed a timely request for a hearing on February 14, 2018. (Exhibit 3).

6. Petition pled guilty to passing a worthless check, Ark. Code Ann. § 5-37-305, a felony, on December 18, 2013, in Faulkner County circuit court case CR 13-958. Petitioner was sentenced to four years of probation and ordered to pay restitution in the amount of \$9,049.50. (Exhibit 6).

7. Although petitioner disclosed on his producer application that he had a felony conviction, he failed to specifically disclose his 2013 hot check conviction and failed to include a copy of the charging instrument or the judgment and commitment order with his application as required.

8. The hearing record was kept open to allow Petitioner to submit documentary proof that his 2013 felony hot check conviction had been dismissed or expunged. Petitioner did not submit such proof.

9. Petitioner's 2013 felony hot check conviction has not been expunged or dismissed.

10. Petitioner's hot check felony is a conviction that involves fraud or breach of trust and therefore Petitioner would need a U.S.C. 1033 Waiver to work in the business of insurance.

11. The hearing record was kept open for seven days to allow Petitioner to submit a request for a U.S.C. 1033 Waiver. Petitioner did not submit a completed application.

12. Petitioner's request for a U.S.C. 1033 Waiver to work in the business of insurance is denied.

## CONCLUSIONS OF LAW

1. To obtain a insurance producer license Ark. Code Ann. § 23-64-202(a)(2)(C)(i) requires that an applicant must be "deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation, and these qualifications must continue in order to remain licensed."

2. Petitioner, as the party requesting an order granting a producer's

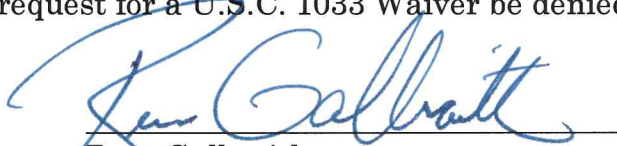
license, has the burden of proof as per Ark. Code Ann. § 25-15-213(4). Petitioner has failed to present sufficient evidence to meet his burden of proof that he has satisfied the statutory requirements to be an insurance producer as required by Ark. Code Ann. § 23-64-202(a)(2)(C)(i) and § 23-64-506(e)(1).

3. Failing to submit a complete producer license application is a violation of Ark. Code Ann. § 23-64-512(a)(1). Petitioner's failure to disclose and provide a copy of his 2013 Hot Check felony conviction with his license application was therefore a violation of Ark. Code Ann. § 23-64-512(a)(1)

### RECOMMENDATION OF HEARING OFFICER

WHEREFORE, upon consideration of the evidence of record and the foregoing Findings of Fact and Conclusions of Law, the Hearing officer recommends the following:

1. That the Arkansas resident producer license application of Petitioner be denied.
2. That the Petitioner request for a U.S.C. 1033 Waiver be denied.

  
Russ Galbraith  
Chief Deputy Commissioner

### CERTIFICATION

I, Allen Kerr, Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendation of the Hearing Officer were made by and under my authority and supervision by Russ Galbraith, Chief Deputy Commissioner and Hearing Officer in this proceeding. I

hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation in full, as set forth herein.

THEREFORE, it is hereby ORDERED that the Arkansas producer license application of Petitioner is denied. The Petitioner's request for a U.S.C. 1033 Waiver is denied.

IT IS SO ORDERED THIS 2nd DAY OF May, 2018.

A handwritten signature in dark ink, appearing to read "Allen Kerr", is written over a horizontal line.

ALLEN KERR  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS